IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE FIFTH DAY OF MAY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

AND
THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT APPEAL No.1440 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 30-04-2004 in W.P.No.6015 of 2004 on the file of the High Court.)

Between:

1.M.A Saleem, S/o.Gaffar,
R/o.Old Vegetable Market, Siddipet, Medak District.
2.Mandal Rajiah, S/o. Malliah,
R/o. Old Vegetable Market, Siddipet, Medak District.
3.D.Lachiah, S/o Agamiah,
R/o.Old Vegetable Market, Siddipet, Medak District.
4.D.Veeramallu, S/o.Veeriah,
R/o.Old Vegetable Market, Siddipet, Medak District.
5.D.Lingam, S/o. Malliah,
R/o. Old Vegetable Market. Siddipet, Medak District.
6.M.Rajesham, S/o.Yellaih,
R/o.Old Vegetable Market, Siddipet, Medak District.
7.M.Manemma, S/o.Rajesham,
R/o.Old Vegetable Market, Siddipet, Medak District.
8.Md. Patel Pasha, S/o.Abdul Qader,
R/o.Old Vegetable Market, Siddipet, Medak District.
9.L.Nagarajam, S/o. Adiviah,
R/o.Old Vegetable Market, Siddipet, Medak District.
10.Qader, S/o.Gaffar,
R/o. Old Vegetable Market, Siddipet, Medak District.
11.Md.Mohid, S/o. Gaffar,
R/o. Old Vegetable Market, Siddipet, Medak District.
12.M.A.Razak, S/o. Gaffar,
R/o. Old Vegetable Market, Siddipet, Medak District.
13.C.Siddiah, S/o.Ramaniah,
R/o. Old Vegetable Market, Siddipet, Medak District.

..... APPELLANTS

AND

Commissioner, Siddipet Municipality
Siddipet, Medak District.

.....RESPONDENT.

Counsel for the Appellants : Mr.D.DEVENDER RAO

Counsel for the Respondent : Mr.THIMMA REDDY

The Court at the admission stage made the following :

ORAL JUDGMENT: (per the Hon'ble the Chief Justice)

Pursuant to the auction which was conducted by the respondent Municipality, the petitioners-appellants were given some shops on lease in the Vegetable Market on payment of rent which was agreed to between the petitioners and the respondent Municipality. The rent ranges from Rs.13/- to Rs.60/- per month. Abruptly, the petitioners were served with notices of demand demanding them to pay rent at Rs.600/- per month and also arrears of enhanced rent. They were asked to pay the amount as stated in the notices, failing which they will be evicted. The notices issued by the Municipality were challenged by the petitioners in the writ petitions.

The stand taken by the respondent Municipality was that shops were auctioned in 1987 and since then the bidders themselves continued to run the shops or sub-let the same to third parties at higher rents, and since there has been no enhancement of rent after 1987 and having regard to the responsibility cast upon the Municipality to provide minimum civic amenities to the shop owners as well as those visiting the market area, the Municipal Council considered appropriate to enhance the rent and passed a resolution on 30-11-2002 enhancing the rent and pursuant thereto notices were issued to all shop owners to pay the enhanced rent and continue to pay the same and thus the petitioners have no right to maintain the writ petition.

Learned single Judge dismissed the writ petition on the ground that since the rent was fixed in 1987 and since there is no enhancement in the rent, the action of the respondent in passing the resolution cannot be questioned by the writ petitioners.

We have heard the learned counsel for the parties.

For our perusal, learned Standing Counsel for respondent Municipality has produced the record.

Pursuant to the resolution passed by the Municipal Council, the Municipality has decided to enhance the rent payable by the petitioners for the shops which were leased out pursuant to the auction conducted in 1987, and the petitioners were called upon to pay the enhanced rent. Such direction of the respondent Municipality will definitely be amenable to writ jurisdiction when Municipality is not acting in terms of the contract entered into with the petitioners, but is trying to enforce some other statutory obligations calling upon the lessees to pay the enhanced rent. Admittedly, the petitioners are not parties to the resolution which was passed by the Municipal Council by which decision was taken to enhance the rent, and the petitioners have not so far agreed to pay the enhanced rent. We have not been shown any circular on the basis of which respondent Municipality can unilaterally enhance the rent. In these circumstances, in case respondent Municipality wants to enhance the rent, it has to follow the procedure as per law. All other grounds are kept open for the Municipality like conducting fresh auction for the shops and fixing rent. Till then the action of the respondent Municipality calling upon the lessees to pay the enhanced rent cannot be valid and it is illegal.

Learned Standing Counsel for the Municipality submits that the petitioners have not paid the rent and they are in arrears and some of the lessees have sub-let the shops to third parties at higher rent. If that be so, the respondent Municipality is not powerless to evict the lessees in accordance with law after service of notice. Therefore, reserving liberty to the Municipality to take action against the lessees in accordance with law, the notices issued by the respondent Municipality calling upon the petitioners to pay the enhanced rent are quashed.

The writ appeal stands disposed of. No costs.

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(DEVINDER GUPTA, C.J.)

5th October 2004.

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(C.V.RAMULU, J.)

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To

1. The Commissioner, Siddipet Municipality
Siddipet, Medak District.

2.Two C.D. copies.